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IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF UTAH

BEST LITTLE SITES, LLC, a Utah limited
liability company, d/b/a
COMICBOOKMOVIE.COM

Plaintiff,

-vs-

GREAT BOWERY, INC., d/b/a TRUNK
ARCHIVE,

Defendant.

COMPLAINT

Case No.

Judge:

JURY TRIAL DEMANDED

Plaintiff Best Little Sites, LLC, d/b/a ComicBookMovie.com (“**CBM**” or “**Plaintiff**”) by and through its attorneys assert this Complaint against Great Bowery, Inc. d/b/a Trunk Archive (“**Trunk Archive**” or “**Defendant**”) and alleges as follows:

NATURE OF ACTION

1. CBM seeks a declaratory judgment that CBM and its users are not liable to Trunk Archive for infringement of copyright law and, in the alternative, declaration of appropriate copyright remedies under the U.S. Copyright Act, 17 U.S.C. § 106, and an award of damages, attorneys’ fees and costs.

PARTIES

2. Plaintiff is a Utah limited liability company duly organized and existing under the laws of Utah, with a principal place of business at 639 E 720 N, Lindon, UT 84042.

3. Upon information and belief, Defendant Great Bowery, Inc. d/b/a Trunk Archive, is a Delaware corporation duly organized by law, having a principal place of business at 466 Broome Street, 4th Floor, New York, New York, 10013. At all times material hereto, Trunk Archive has been a division or a part of Great Bowery, Inc. and has offices at 190 Bowery, New York, New York 10012.

4. Upon information and belief, Trunk Archive represents approximately nine hundred (900) photographers and it has access to hundreds of thousands of images covering fashion, celebrity, beauty, lifestyle, still life, design, architecture and travel. Upon further information and belief, Trunk Archive is in the business of licensing photographs to its clients, which were taken by various commercial and fine art photographers for use in the entertainment, publishing and fashion industries. Upon further information and belief, Trunk Archive conducts business on an international basis including in the District of Utah.

JURISDICTION AND VENUE

5. The Court has jurisdiction under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202 and under the laws of the United States concerning actions relating to copyright, 28 U.S.C. § 1338(a).

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

7. This Court has personal jurisdiction over Trunk Archive because Trunk Archive conducts business transactions in this State. Trunk Archive has solicited a copyright license agreement with CBM in this State.

8. A substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in this Judicial District. Venue therefore lies in the United States District for the District of Utah.

FACTUAL BACKGROUND

ComicBookMovie.com

9. ComicBookMovie.Com is a user-generated website where fans can post text, images, and comments related to movies based on comic books and other movies in that genre.

10. CBM does not have employees and is operated and maintained by its sole owner.

11. CBM has had a Designated Agent under the Digital Millennium Copyright Act (“DMCA”) at all material times. *See* Best Little Sites, LLC DMCA Designated Agent Directory screenshots, attached hereto as **Exhibit A**.

12. CBM has a DMCA Policy published on its website explaining the DMCA take-down and notice procedure. *See* Comic Book Movie Copyright Policies, attached hereto as **Exhibit B**.

13. Every user-generated post on CBM’s website includes the following language: “DISCLAIMER: ComicBookMovie.com is protected from liability under the DMCA (Digital Millennium Copyright Act) and "Safe Harbor" provisions. This post was submitted by a volunteer contributor who has agreed to our Code of Conduct. CBM will disable users who knowingly commit plagiarism, piracy, trademark or copyright infringement. Please contact us for expeditious removal of copyrighted/trademarked content. Learn more about our copyright and trademark policies [HERE](#).”

Original Demand

14. On or about March 27, 2019, CBM received a copyright infringement demand (“Original Demand”) claiming that a user-generated post on CBM’s website contained embedded images that allegedly infringed Trunk Archive’s copyright.

15. The Original Demand was not sent to CBM through approved DMCA channels.

16. Upon receiving the Original Demand, CBM promptly removed the images identified in the Original Demand.

17. On or about March 27, 2019, CBM sent an email to Trunk Archive’s counsel in response to the Demand, notifying them that CBM had removed the images in compliance with the DMCA.

18. On or about March 27, 2019, Trunk Archive’s counsel responded via email that it “cannot find a new DMCA registration for [CBM] after 2016.”

19. On or about April 10, 2019, CBM’s counsel provided documentation to Trunk Archive from the publicly available DMCA Designated Agent Directory showing that Best Little Sites, LLC and CBM had a DMCA Designated Agent at all times material hereto. *See* April 10, 2019 email, attached hereto as **Exhibit C; Exh. A.**

Revised Demand

20. In response to CBM’s DMCA Designated Agent documentation, Trunk Archive sent an updated demand letter (“Revised Demand”), claiming “additional infringements on the website” that were allegedly “posted by ComicBookMovie.com employees and are therefore disqualified from DMCA safe harbor protections.” *See* April 10, 2019 Response email, attached hereto as **Exhibit D;** Revised Demand attached hereto as **Exhibit E.**

21. The Revised Demand identifies eight allegedly copyrighted works that were stored on third-party servers and embedded on CBM's website ("Accused Images"). *Id.*

22. The Revised Demand states, "I have an obligation to caution you about the seriousness of the matter. If forced to go to court to resolve the matter, my client will ask for the maximum justifiable damages. My client may also ask the court to order ComicBookMovie.com to pay their attorneys fees and court costs. Copyright lawsuits can result in judgments, wage garnishments and liens on property. In some instances, the business owner can be held individually liable." *Id.*

23. The Revised Demand also states, "[W]ithout your cooperation, our only option is to litigate the matter, which we frequently [sic] do, so please do not make the mistake of ignoring this. If this matter is litigated, the demand amount will likely quadruple or more, and then you will likely also have to pay attorneys fees." *Id.*

24. The Accused Images were displayed on CBM's website by embedding the image and linking back to the third-party server. The Accused Images were all stored on servers belonging to third parties and were not stored on servers that CBM controlled. The Revised Demand includes a file path for each of the Accused Images. None of the provided file locations provided for any of the Accused Images direct to a location or server under the custody or control of CBM. *Id.*

25. The Accused Images were posted by CBM users who are not employees or owners of CBM.

26. The Accused Images were not posted on CBM's website at the direction of CBM.

27. CBM did not have actual knowledge that the Accused Images were infringing or allegedly infringing until it received the Demand and Revised Demand, at which point CBM immediately removed the embedded images.

28. CBM was not aware of facts or circumstances from which it was apparent that the Accused Images were infringing.

29. Upon receipt of the Revised Demand, CBM acted expeditiously to remove and disable access to the Accused Images.

30. CBM obtained minimal (if any) monetary benefit directly or indirectly from its use of the Accused Image during the brief period that it was posted on its website.

31. On or about April 15, 2019, CBM's counsel informed counsel for Trunk Archive that the Accused Images had been removed and that "ComicBookMovie.com is a user-generated site with no employees. Users [] can post content to the site. Because this content is posted at the direction of a user and because CBM acted expeditiously to remove the material upon obtaining awareness of alleged infringement, CBM is protected from liability by the safe harbor provisions in 17 U.S.C. 512(c)." *See* April 15, 2019 email, attached hereto as **Exhibit F**.

32. On or about April 19, 2019, CBM's counsel had a phone call with Trunk Archive's counsel and reiterated its position that CBM behavior fell into a safe harbor provision of the DMCA and that the posting of the Accused Images did not constitute copyright infringement because the images were hosted on a server outside of CBM's custody or control.

33. Trunk Archive's counsel disagreed with CBM's position and continued to allege that CBM was liable for copyright infringement.

34. After Trunk Archive's counsel was informed that CBM was represented by counsel, Trunk Archive's counsel continued to send correspondence directly to CBM.

FIRST CLAIM FOR RELIEF
(For Declaratory Judgment of No Copyright Infringement)

35. Plaintiff repeats and re-alleges each of the allegations of this complaint as though fully set forth herein.

36. There is a substantial and continuing justiciable controversy between CBM and Trunk Archive as to Trunk Archive's right to threaten or maintain suit for infringement of the Accused Images by CBM or its users, as to the validity, enforceability and scope of the alleged copyright in the Accused Images, and as to whether the Accused Images as used by CBM or its users infringes any valid and enforceable rights owned by Trunk Archive.

37. Upon information and belief, the Accused Images as posted by users on CBM's website do not infringe any valid and enforceable copyright owned by Trunk Archive.

38. In the alternative, if CBM's use of the Accused Images does infringe a copyright owned by Trunk Archive, CBM's use was not willful and remedies for such use should not exceed Market Value.

39. The Court should issue a declaratory judgment stating that Trunk Archive is without right or authority to threaten or to maintain suit against CBM or its users for alleged copyright infringement, that no valid and enforceable copyright is infringed by CBM or its customers based on its use of the Accused Images, or if infringement is found, it was not willful and any remedy should not exceed Market Value.

40. By reason of Defendants' wrongful allegations of infringement and other wrongdoing committed by Defendants as alleged herein, a declaratory judgment is necessary to resolve, clarify, and settle the respective rights and legal positions of the parties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. Entry of judgment that Trunk Archive is without right or authority to threaten or to maintain suit CBM or its users for alleged copyright infringement and that no valid and enforceable copyright is infringed by CBM or its customers based on its use of the Accused Images, or if infringement is found, it was not willful and any remedy should not exceed Market Value per Accused Image found to be infringed;
2. Entry of a preliminary and permanent injunction enjoining Trunk Archive, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Trunk Archive from threatening CBM or any of its agents, servants, employees, or customers with infringement litigation or charging any of them either verbally or in writing with copyright infringement;
3. Entry of judgment for costs and reasonable attorney fees incurred by CBM; and
4. Such other and further relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury for causes of action, claims, or issues in this action, claims, or issues in this action that are triable as a matter of right to a jury.

Dated this 9th day of May, 2019.

PIA ANDERSON MOSS HOYT

/s/ Robert E. Aycock

Robert E. Aycock

William B. Chadwick

Attorneys for Plaintiff ComicBookMovie.com